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9 PUBLIC KEY PARTNERS

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROGER SCHLAFLY,

Plaintiff,

v.

PUBLIC KEY PARTNERS and  
RSA DATA SECURITY, INC.,

Defendants.

No. CV 94 20512 SW (PVT)

DECLARATION OF THOMAS R.  
HOGAN IN SUPPORT OF DEFENDANT  
PUBLIC KEY PARTNERS' MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT PURSUANT TO F.R.C.P. 56

Date: August 27, 1997

Time: 10:00 a.m.

Ctrm: 4, 5th Floor

Judge: Hon. Spencer Williams

I, Thomas R. Hogan, hereby declare:

1. I am counsel of record for the defendant Public Key Partners. I have personal knowledge of the facts set forth below, and if called upon to do so, could and would competently testify thereto.

2. Attached hereto as Exhibit A are true and correct copies of pages 734 of the deposition of Roger Schlafly taken on September 28, 1995.

3. Attached hereto as Exhibit B are true and correct copies of pages 730:21-26 of the deposition of Roger Schlafly taken on September 28, 1995.

DECLARATION OF THOMAS R. HOGAN  
No. CV 94 20512 SW (PVT)



A

1 A I think I learned that in recovery. I don't  
2 think I knew that before this case.

3 Q So it's your understanding now that at least  
4 there were allegations that the patents were blocking  
5 around the time that PKP was formed; right?

6 A Yes.

7 Q Now, from the point of view of persons seeking  
8 a PKP license -- strike that. From the point of view  
9 of persons seeking to -- seeking the license to the  
10 public key cryptography patents, didn't the formation  
11 of PKP essentially make it easier for such a person  
12 to license all of the patents?

13 A Well, I expect PKP to make that argument. I  
14 think it's probably not true, though.

15 Q All right. Why do you think it's not true?

16 A Because I think if PKP has not been formed,  
17 there would have been some competition between the --  
18 the -- the licensors of the Stanford patents and the  
19 licensors of the MIT patents. And as a result of  
20 that competition, I think that -- that both of those  
21 camps would have likely ended up with -- with -- with  
22 reasonable license policies and it would have ended  
23 up being easy for someone to get a license to some or  
24 all of the patents.

25 Q What do you mean by reasonable licensing  
26 policies?

B

1 high, in your view?

2 A To say that a company has monopoly power means  
3 as I understand it that they have the capacity or the  
4 ability to set prices above or below what would  
5 otherwise be the market price, but doesn't  
6 necessarily mean that they do it.

7 Q All right. Do you have any understanding one  
8 way or the other as to whether RSA sets prices  
9 artificially high?

10 A No, I don't.

11 Q Do you have an understanding as to whether RSA  
12 sets the prices artificially low?

13 A No, I don't.

14 Q Okay. Let's turn to paragraph 83. One thing  
15 that I'd like probably to clarify first, it says:  
16 "Defendant PKP has pooled patents in an attempt to  
17 monopolize public key technologies," but later in  
18 paragraph 84, you state that PKP was formed by RSA  
19 and Cylink.

20 So going back to paragraph 83, which  
21 entities in your view have pooled patents? Is it  
22 defendant PKP or is it RSA and Cylink, who formed PKP?

23 A Well, I'm not sure there's a distinction. It  
24 was RSA and Cylink that decided to pool the patents  
25 in forming PKP, and then it was PKP that then had  
26 control of the patent pool.

A handwritten mark, possibly a signature or initials, consisting of a large, stylized 'C' shape with a vertical stroke intersecting it near the top.

1 license the patent, it's -- it's X dollars, and if  
2 you want to license the -- the software and -- and  
3 the patent license restricted to use of RSA Data  
4 Security software or something, then it's Y dollars.

5 Q What's your understanding of tying products  
6 together in an antitrust sense? And I know you're  
7 not an attorney, but when you wrote this allegation,  
8 what did you have in mind?

9 A Well, what tying refers to me is when a company  
10 has two products and they make the purchase of a  
11 second -- one product somehow conditional on the  
12 purchase of another product.

13 Q Right.

14 A Okay. What -- what motivated the writing of  
15 this was the -- was the observation that most of the  
16 people who -- in the marketplace who are using -- who  
17 are using the RSA patent are also using BSAFE or some  
18 RSA Data Security software. And it seemed to me that  
19 that would be unlikely to be the case, unless --  
20 unless -- unless RSA Data Security somehow forced or  
21 pressured its customers to do it that way.

22 Q In your own mind, what makes it unlikely?

23 A Because -- because if there were no such tying,  
24 then -- then it would seem to me that you would then  
25 license the patent for one price and you can license  
26 the patent and some software for another price. The

1 price for just licensing the patent should be less,  
2 and that there would be customers who would decide  
3 that they would save a few bucks or whatever by just  
4 licensing the patent.

5 Q If you just licensed the patent, then you still  
6 have to develop the software; right?

7 A Develop it or buy it from someone else.

8 Q Have you contacted any PKP licensees to confirm  
9 your suspicion about tying?

10 A No.

11 Q Have you talked AT&T to explore this allegation?

12 A No.

13 Q All right. How have you been injured by this  
14 alleged practice of tying licenses -- I'm sorry, PKP  
15 patent licenses with the purchase of RSA software?

16 A Well, if in fact there is such tying, then I  
17 would say that -- that I'm injured because if it  
18 weren't for such tying, there would be people with  
19 RSA patent licenses but needing of RSA software, and  
20 maybe I could supply software to address that market.

21 Q And what steps have you taken to sell RSA  
22 software to any entities other than ISC and AT&T?

23 A None.

24 Q Has this alleged tying impacted ISC in any way?

25 A Well, yes, I'd say so, in the same way that I  
26 said that it impacted me; namely, that -- that if it

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1 but they suffered from the same patent pool in that  
2 -- in that until the AT&T deal came along, they could  
3 not sell to commercial users.

4 Q And this morning, we already discussed how ISC  
5 has suffered from the patent pool; right?

6 A Yes.

7 Q Do you have anything to add to your testimony  
8 this morning on that subject?

9 A No.

10 Q Okay. Now we'll move on to paragraph 89. This  
11 is where you allege that "PKP ties licensing of its  
12 patents to the purchase of software and services from  
13 RSA." Earlier in the deposition, we discussed the  
14 basis for that allegation. I don't want to  
15 mischaracterize what you testified to before, so  
16 don't let me. But as I recall what you testified is  
17 that the basis of this statement is that some PKP  
18 patent licensees also licensed software from RSA;  
19 right? And that's the basis for this allegation in  
20 paragraph 89?

21 A I'm not sure I phrased it that way. We did  
22 discuss this issue.

23 Q I'm willing to accept any phrasing you would  
24 prefer, or I can just ask the question again. What  
25 is the basis for allegations that PKP ties the  
26 licensing of patents to purchase of software from

1 RSA?

2 A My basis for making this allegation is  
3 somewhat circumstantial. It was based on my  
4 observation that most of the people who seemed to be  
5 using RSA in some sense, either from a license or RSA  
6 software, are using software from RSA Data Security.  
7 And I've never seen an offer that -- that -- that  
8 said something like well, if you want to license the  
9 patent, you pay X dollars, or if you want to license  
10 the RSA software, you pay Y dollars. It doesn't seem  
11 to be an option that's offered to people.

12 Q I'm afraid I'm a little confused by that  
13 answer. Are you saying that it is not an option that  
14 is offered to people that you get -- that the  
15 potential patent licensee gets a discount on the  
16 patent license if they also purchase RSA software?

17 You know, I may have framed the question  
18 in the negative, which makes me concerned about  
19 whether or not your answer will make sense, so let me  
20 phrase the question more affirmatively. Have you  
21 ever heard that potential PKP licensees get a  
22 discount on the PKP patent license if they also  
23 purchase RSA software?

24 A Well, not directly. But I'm not sure that  
25 customers are given the choice.

26 Q All right. Given what choice?

1 A The choice of licensing the patent or licensing  
2 the software.

3 Q You better explain that answer.

4 A Okay. In the process of going through  
5 discovery documents, I saw an exchange of  
6 correspondence between Mobius Encryption Technologies  
7 and -- and -- and I guess it was some representative  
8 of RSA Data Security. In that correspondence,  
9 somebody from Mobius said that their position -- that  
10 is, their market was such that they have several  
11 encryption products and for some things, they'd like  
12 to get an RSA patent license, and then -- and then  
13 for purposes of -- of making their own RSA product of  
14 some sort. For other purposes, they'd rather use  
15 BSAFE and license that. And this letter said in a  
16 pretty straightforward way, I thought, that we have  
17 different products, we have some needs to go each  
18 way, and we'd like to know the -- what the prices are  
19 of each so we can make our own decision.

20 And the response from RSA Data was that  
21 Mobius was rebuffed on this. That is, RSA Data  
22 essentially said -- said, no, that's -- that's not  
23 the way we operate. You either -- we either have  
24 customers who negotiate a license or we have  
25 customers who -- who -- that is, we either have  
26 customers who negotiate a patent license or we have

1 customers who negotiate a software license, and it's  
2 kind of an either/or situation. And -- and you know,  
3 once you decide -- once we come to a decision, that's  
4 -- that's -- which way it is, then we negotiate on  
5 that basis, but we're not going to give you a choice  
6 about the matter.

7 And I'll say that's my interpretation of  
8 the letter. The letter's on the record somewhere and  
9 you're welcome to read it for yourself and put your  
10 own interpretation on it.

11 Q As I understand what you just said, purchase of  
12 RSA software is separate and independent from  
13 purchase of a PKP patent license; right?

14 A Separate and independent? I don't know what  
15 you mean by that. I mean, when you do license their  
16 BSAFE Toolkit or something, you have to get some kind  
17 of license that -- some kind of implied license to  
18 the RSA patent.

19 Q All right. But this allegation is that a PKP  
20 patent license is tied to the purchase of software.  
21 And as I understand your statement regarding Mobius,  
22 RSA at least treats those issues as independent;  
23 right?

24 A Well, no, I'd say if they're really  
25 independent, then RSA would have come back and said  
26 -- said look, here's the deal. If you want to just

## Deposition of Roger Schlafly - Volume VII

1 license the patent, it's -- it's X dollars, and if  
2 you want to license the -- the software and -- and  
3 the patent license restricted to use of RSA Data  
4 Security software or something, then it's Y dollars.

5 Q What's your understanding of tying products  
6 together in an antitrust sense? And I know you're  
7 not an attorney, but when you wrote this allegation,  
8 what did you have in mind?

9 A Well, what tying refers to me is when a company  
10 has two products and they make the purchase of a  
11 second -- one product somehow conditional on the  
12 purchase of another product.

13 Q Right.

14 A Okay. What -- what motivated the writing of  
15 this was the -- was the observation that most of the  
16 people who -- in the marketplace who are using -- who  
17 are using the RSA patent are also using BSAFE or some  
18 RSA Data Security software. And it seemed to me that  
19 that would be unlikely to be the case, unless --  
20 unless -- unless RSA Data Security somehow forced or  
21 pressured its customers to do it that way.

22 Q In your own mind, what makes it unlikely?

23 A Because -- because if there were no such tying,  
24 then -- then it would seem to me that you would then  
25 license the patent for one price and you can license  
26 the patent and some software for another price. The

1 price for just licensing the patent should be less,  
2 and that there would be customers who would decide  
3 that they would save a few bucks or whatever by just  
4 licensing the patent.

5 Q If you just licensed the patent, then you still  
6 have to develop the software; right?

7 A Develop it or buy it from someone else.

8 Q Have you contacted any PKP licensees to confirm  
9 your suspicion about tying?

10 A No.

11 Q Have you talked AT&T to explore this allegation?

12 A No.

13 Q All right. How have you been injured by this  
14 alleged practice of tying licenses -- I'm sorry, PKP  
15 patent licenses with the purchase of RSA software?

16 A Well, if in fact there is such tying, then I  
17 would say that -- that I'm injured because if it  
18 weren't for such tying, there would be people with  
19 RSA patent licenses but needing of RSA software, and  
20 maybe I could supply software to address that market.

21 Q And what steps have you taken to sell RSA  
22 software to any entities other than ISC and AT&T?

23 A None.

24 Q Has this alleged tying impacted ISC in any way?

25 A Well, yes, I'd say so, in the same way that I  
26 said that it impacted me; namely, that -- that if it

## Deposition of Roger Schlafly - Volume VII

1 weren't for this alleged tying, that there would be  
2 -- there would be more of a market for software to  
3 people who just have patent licenses but no software,  
4 and that ISC could address that market.

5 Q What attempts has ISC made other than its deal  
6 with AT&T to sell RSA software to -- well, to sell  
7 any of its software to PKP patent holders?

8 A You mean PKP patent licensees?

9 Q Correct.

10 A None that I know of. I mean, unless you --  
11 unless you consider the U.S. government a patent  
12 licensee.

13 Q Well, they are, but I did intend my question to  
14 be directed to commercial PKP patent licensees. Is  
15 your answer any different?

16 A None -- none that I know of. It's possible  
17 that they made some attempts, but none that I know of.

18 Q I've asked this question before in other  
19 contexts. But if ISC has been injured by this  
20 practice, then you would in turn suffer damages  
21 because of lower royalties paid to you from ISC;  
22 correct?

23 A Correct.

24 Q Okay. Let's move on to paragraph 90. Here you  
25 allege that by the defendants' attempt to get their  
26 technology to be declared a draft standard --

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1 Q And as a result of that, your royalties from  
2 ISC for the DSA products are less than what you  
3 believe they might be; is that true?

4 A Yes.

5 Q Have you suffered any other sort of damage as a  
6 result of the patent controversy surrounding DSA?

7 A Just that otherwise, I might have had  
8 opportunities to sell to other companies.

9 Q I understand. Okay. Let's get into paragraphs  
10 92 through 94, which describe an alleged secondary  
11 boycott of competitors.

12 A Yes.

13 Q Now, the statement there is that defendants  
14 have organized an illegal secondary boycott of  
15 competitors, but then you add that RSA has publicly  
16 distributed a "Sink Clipper" poster. Is it your  
17 contention that the defendants organized the  
18 secondary boycott or RSA organized the secondary  
19 boycott?

20 A Well, it's -- it's -- it's -- it's a little  
21 fuzzy.

22 Q How is it fuzzy?

23 A Well, paragraph 93, the picture of Bidzos  
24 wearing one of these T shirts appeared in New York  
25 Times Magazine. Mr. Bidzos is president of RSA Data  
26 Security and he's also president of Public Key.

1 Partners. So then you have to ask, well, was he  
2 wearing the T shirt in the capacity of RSA Data  
3 Security or Public Key Partners?

4 Q What's your understanding?

5 A Well, I don't know. Probably RSA Data  
6 Security, but who knows?

7 Q Have you seen anything directed from PKP by  
8 which it advocated a secondary boycott of RSA's  
9 competitors?

10 A On PKP stationery or --

11 Q Or anyone officially acting in the capacity of,  
12 a PKP spokesperson.

13 A Well, Bidzos is president of PKP.

14 Q Let's ask the earlier question. Anything on  
15 PKP stationery?

16 A No.

17 Q Anything on which Mr. Bidzos is identified as  
18 the president of PKP in which he advocates a  
19 secondary boycott of competitors, an alleged  
20 secondary boycott of competitors?

21 A Well, my evidence on this subject is presented  
22 here in its entirety.

23 Q All right.

24 A I could go back to the New York Times Magazine  
25 article and search through that article for exactly  
26 how Bidzos is identified, but this is it. This is my

1 evidence.

2 Q Skip to paragraph 94, which alleges that you  
3 have been developing software for the Fortezza, also  
4 known as Tessera card. And I believe that we  
5 discussed this in your deposition prior, in our last  
6 session; right?

7 A Yes.

8 Q Let me ask this. Have you made any attempt to  
9 market software using Clipper chip technology outside  
10 of your relationship with ISC?

11 A No.

12 MR. MOORE: Let's take a break.

13 (Whereupon, a recess was taken from 2:53  
14 to 3:14 p.m.)

15 Q BY MR. MOORE: Let's get back on the  
16 record. All right. Mr. Schlafly, we are going to  
17 continue our course through the antitrust causes of  
18 action in the amended complaint. Paragraph 95 refers  
19 to defendants' conduct and tactics with regard to the  
20 PKP patents and that it constitutes patent misuse,  
21 for which you provide the example that defendants  
22 knew the Hellman-Merkle patent to be invalid.

23 I understand that it's your position that  
24 the Hellman-Merkle patent is invalid. On what do you  
25 base the contention that defendants know it to be  
26 invalid?

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1 other competitors.

2 Q So the damages stemming from the alleged patent  
3 misuse has already basically been covered in your  
4 deposition today; right?

5 A Yes.

6 Q Just to make sure that we're on the same  
7 wavelength, because suddenly I'm not sure that we  
8 are, I just want to be sure you have nothing new to  
9 add in terms of how you've been injured, that is, as  
10 a result of patent misuse that's in any way different  
11 from the things that we've already discussed today.

12 A Not that I can think of.

13 Q All right. Let's move on to paragraph 96. In  
14 that paragraph, you allege that the defendants have  
15 engaged in price discrimination due to the defendants  
16 charging different royalties to different patent  
17 licensees. You are talking about patent licensees in  
18 this paragraph, aren't you?

19 A Yes.

20 Q How have the defendants used price  
21 discrimination to bolster their alleged monopoly?

22 A Well, I've still been unable to determine just  
23 what fees or royalties are being charged to different  
24 defendants, because those documents aren't available  
25 to me. My suspicion, though, is that there are  
26 different royalties to different licensees, and that

1 defendants -- that the defendants are using those  
2 differences to bolster their business position; that  
3 is, a potential licensee might get a favorable rate  
4 or an unfavorable rate, depending on how this company  
5 or that company's plans fit in with the defendants'  
6 business plans.

7 Q Do you have any evidence to support that?

8 A I don't have any direct evidence. Indirect  
9 evidence is that I think that if everyone were paying  
10 the same royalty, that figure would be known and  
11 published and available to people, because you know,  
12 word would have gotten out because enough people are  
13 doing it. But that figure's not out, and all the  
14 people with PKP licenses seem to have secrecy clauses  
15 and the payments are closely guarded secrets, and  
16 that kind of implies to me that there are different  
17 terms.

18 Q Do you recall Mr. Bidzos' testimony at the  
19 evidentiary hearing regarding the pricing terms of  
20 PKP licensing?

21 A I kind of remember him touching on this subject.

22 Q Do you recall what he said?

23 A No.

24 Q Okay. With respect to ISC's attempt to acquire  
25 a PKP license, do you have any understanding that PKP  
26 was attempting to charge either more or less to ISC

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19 evidentiary hearing regarding the pricing terms of  
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21 A I kind of remember him touching on this subject.

22 Q Do you recall what he said?

23 A No.

24 Q Okay. With respect to ISC's attempt to acquire  
25 a PKP license, do you have any understanding that PKP  
26 was attempting to charge either more or less to ISC

1 than any other PKP licensee?

2 A I have no evidence either way.

3 Q AT&T holds a PKP license; right?

4 A Yes.

5 Q Do you know if that license is more expensive  
6 or less expensive than other PKP licenses?

7 A I don't know what the AT&T terms are.

8 Q All right. And how has this alleged price  
9 discrimination impacted you?

10 A Well, I guess mainly that it's because it has  
11 strengthened RSA Data Security's position in the  
12 marketplace and made it harder for somebody else to  
13 compete.

14 Q All right. And have you suffered damages as  
15 a result of this price discrimination?

16 A I'd say my damages are it's fewer sales because  
17 it's harder to compete.

18 Q Fewer sales through ISC; correct?

19 A Fewer sales through ISC.

20 Q Now, ISC never did end up with a PKP license,  
21 did they?

22 A Correct.

23 Q And --

24 A When I say ISC, I mean ISC through AT&T.

25 Q So is it your belief that AT&T pays more for  
26 its license than other PKP licensees?

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21 did they?

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23 Q And --

24 A When I say ISC, I mean ISC through AT&T.

25 Q So is it your belief that AT&T pays more for  
26 its license than other PKP licensees?

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1 clipping is attached to your amended complaint as an  
2 exhibit; isn't that right?

3 A Yes, I believe so.

4 Q And where did you get it?

5 A From ISC.

6 Q Is it ISC's practice to forward press clippings  
7 of this nature to you?

8 A Yes.

9 Q And what is the purpose of their doing that?

10 A Just to help keep me informed of the industry,  
11 as far as I know. And when Venn sees an article  
12 about SecretAgent or something like that, he often  
13 forwards it to me.

14 Q All right. Now, I take it that this particular  
15 article is attached to your complaint because of its  
16 reference in the center article to the headline and  
17 the story, "NIST Approves DSS Despite Threat of a  
18 Patent Lawsuit." Is that right?

19 A Yes.

20 Q Would you describe for me to the extent you  
21 know the controversy with NIST and the DSS, the  
22 digital signature standard?

23 A Well, there were several controversies. The  
24 one in particular that's mentioned in this article is  
25 the claim that PKP apparently views the practice of  
26 the DSS as an infringement of PKP patents. And the

1 government, specifically NIST, approved the DSS as a  
2 standard, with a statement that use of the standard  
3 is -- is royalty-free and in their opinion, free of  
4 patents, except for their own patent, which they're  
5 not charging a royalty on.

6 Q This article -- oh, strike that. What's your  
7 understanding of which PKP patents form the basis of  
8 the dispute with NIST, if you have such an  
9 understanding?

10 A My understanding is that it's based on the  
11 Diffie-Hellman patent, the Hellman-Merkle patent and  
12 the Schnorr patent.

13 Q Not the RSA patent, correct, to your knowledge?

14 A That is my understanding.

15 Q All right. The focus of this article appears  
16 to be that NIST went ahead and approved DSS as a  
17 federal information processing standard, despite the  
18 controversy with PKP. Is that a correct reading of  
19 this article?

20 A Yes.

21 Q What's your understanding of the present status  
22 of that?

23 A It hasn't changed since this article, as far as  
24 I know.

25 Q So NIST is proceeding, despite PKP's patent  
26 threats; is that right?

1 A Well, it is -- it is still a -- a FIPS  
2 standard. FIPS stands for Federal Information  
3 Processing Standard.

4 Q You designed software for ISC which  
5 incorporated the DSS some time ago; isn't that right?

6 A Yes.

7 Q Has ISC to your knowledge ever refrained from  
8 selling any of its DSS products because of the  
9 controversy with -- between NIST and PKP?

10 A I don't know.

11 Q These DSS products are now part of the products  
12 that AT&T is selling to end users; is that right?

13 A Yes.

14 Q To your knowledge, has AT&T ever refrained from  
15 selling any DSS products because of the controversy  
16 between NIST and PKP?

17 A I'm not sure. There -- there -- there was a  
18 point where AT&T was -- was doing some sort of --  
19 well, I think they were doing some sort of legal  
20 investigation of the DSS patent issues. It's  
21 possible they delayed some sales somewhat. I'm not  
22 sure.

23 Q You don't know; is that your testimony?

24 A Yes.

25 Q What is your understanding or impression of the  
26 impact of the dispute between NIST and PKP on the

1 cryptography market?

2 A I think it's likely that the -- the threat of a  
3 lawsuit that's mentioned in this article deterred  
4 others from using the DSS.

5 Q But it did not deter you; is that right?  
6 Because you designed products that featured DSS.

7 A That's correct.

8 Q As a matter of fact, when NIST approved DSS,  
9 despite the threat of the lawsuit, you, ISC and AT&T  
10 were in the unique position of already having  
11 products that it could sell; correct?

12 A Unique that we were the only ones --

13 Q Yes.

14 A -- that had products?

15 Q Well, let me revise the question. One of only  
16 a few other companies in the cryptography market that  
17 had DSS products.

18 A Yes, that's correct.

19 Q Would it be fair to say that the patent  
20 controversy because NIST disregarded PKP's patent  
21 threats actually gave ISC and AT&T and you a jump on  
22 the competition?

23 A Well, first of all, I wouldn't say that NIST  
24 disregarded the threats. I mean, they apparently  
25 took them seriously and negotiated with PKP for some  
26 period of time.

1 Q Right. And then NIST went ahead, despite the  
2 patent threats; correct?

3 A Eventually, yes, after -- after a couple of  
4 years or so.

5 Q And to the best of your knowledge, isn't the  
6 fact that ISC and AT&T are one of the few companies  
7 that has DSS products prominently featured in AT&T  
8 marketing literature?

9 A Yes.

10 MR. MOORE: All right. Let's move on to  
11 Clipper. And just to give ourselves a point of  
12 reference here, I'd like to have this marked as  
13 Exhibit 66.

14 (Whereupon, Defendant's Exhibit 66 was  
15 marked for identification.)

16 THE WITNESS: Okay.

17 Q BY MR. MOORE: Mr. Schlafly, again,  
18 this is one of the documents that's attached to your  
19 amended complaint; isn't that right?

20 A Yes.

21 Q And where did you get a copy?

22 A I believe I got it from RSA Data Security.

23 Q How did you go about doing that?

24 A I believe they mailed it to me.

25 Q Did you call and ask for a copy?

26 A No.

5

1 CONFIDENTIAL RECORD - ATTORNEYS' EYES ONLY

2 Q And what other people in your mind were  
3 rejected as potential licensees by PKP?

4 A Information Security Corp.

5 Q Anyone else?

6 A The question being --

7 Q Anyone else that you understand has been  
8 rejected as a potential licensee by defendant PKP.

9 A Oh, I think there are probably lots of people  
10 who are rejected.

11 Q I'm concerned with what you know.

12 A With what I know --

13 Q Do you have any information?

14 A With what I know firsthand?

15 Q Any way you know it.

16 MR. MOORE: Secondhand works, too.

17 Q BY MR. HOGAN: Yes. Any basis upon  
18 which you have any belief that organizations were  
19 rejected as potential licensees. And at this point,  
20 I'm asking for names of any who you believe have been  
21 rejected as potential licensees in addition to ISC.

22 A You're asking for any information that I might  
23 have of people who might have been rejected?

24 Q No. Let me rephrase my question. I believe  
25 you've testified that you understand that entities  
26 other than yourself as you've described it in this

1 deposition have been rejected by PKP after they  
2 requested licenses. You mentioned one organization  
3 was ISC.

4 My question now is: Do you have any  
5 information about any other organizations that have  
6 been rejected? So I'm asking for names of  
7 organizations or individuals, entities of any type  
8 to your belief or understanding that have been  
9 rejected as licensees.

10 A Yes. I've heard that others have been  
11 rejected.

12 Q And who are those others? Do you have any  
13 names?

14 A Yes. But you're asking for this information,  
15 even if it's hearsay?

16 Q On any basis that you believe that it's true,  
17 yes.

18 MR. MOORE: This is discovery, Roger.  
19 That means that we get to find out what you have  
20 heard. Then we can go out and -- to these others and  
21 find out one way or the other. That's why the  
22 question is proper.

23 THE WITNESS: Okay. I've heard that Phil  
24 Zimmerman was rejected.

25 Q BY MR. HOGAN: Anyone else?

26 A I've heard that -- that -- that some PGP users

1 were rejected.

2 Q Anyone else?

3 A I heard that Larry Leyton was rejected.

4 Q Anyone else?

5 A I heard that -- yeah, I think there are  
6 probably others. I heard -- I heard that Tandem  
7 Computers was rejected.

8 Q Anyone else?

9 A I heard that -- let me think. Let me think.

10 Let's see. I'm going to ask that this  
11 answer be designated attorneys' eyes only.

12 Q That's fine.

13 A So going back to cover the list of everyone  
14 I've mentioned.

15 Q Right. Oh, you want this whole answer that --  
16 including what you've already said?

17 A Including what I've already said.

18 Q Okay. I understand.

19 A Can we do that?

20 Q Yes, of course.

21 A Okay. The -- and I've heard Mobius was  
22 rejected.

23 Q I'm sorry. Say that again?

24 A Mobius, M-O-B-I-U-S. I've heard -- I've heard  
25 that there are also companies that -- that -- I've  
26 heard also that there are companies that have

1 licenses, but which -- but whose licenses are unduly  
2 restricted. I don't know whether you want to call  
3 those rejections or not.

4 Q These are companies that have licenses as you  
5 understand it from PKP, but the license itself is  
6 unduly restrictive; is that correct?

7 A Yes.

8 Q And to your understanding, who are those  
9 companies?

10 A Well, I've heard that -- that -- I've heard  
11 Microsoft is one. I've heard possibly Spyglass.

12 Q Anybody else that falls into this  
13 restrictive --

14 A And possibly also Secureware. I should say, I  
15 don't actually know whether or not these companies  
16 have PKP licenses, only that I've heard that they  
17 can't get the licenses to do what they want to do.

18 Q Okay. Anybody else fall into that category?

19 A There might be, but that's all I can think of  
20 offhand.

21 Q And have you exhausted your memory with respect  
22 to companies or entities or individuals that you  
23 believe have been rejected by PKP as potential  
24 licensees?

25 A That's all I can think of offhand.

26 MR. MOORE: Can I interject?

1 MR. HOGAN: Sure.

2 MR. MOORE: Mr. Schlafly, does the word  
3 Cylink refresh your memory?

4 THE WITNESS: Oh, yes, yeah.

5 MR. MOORE: And in what sense does it  
6 refresh your recollection?

7 THE WITNESS: They filed a lawsuit in  
8 which they claimed that they have been denied a  
9 license.

10 MR. MOORE: Just thought we should get  
11 the obvious one.

12 THE WITNESS: Good thinking there.

13 Q BY MR. HOGAN: Would you identify for  
14 us the company that you've described -- or the word I  
15 think you used was Mobius, M-O-B-I-U-S.

16 A Yes, Mobius. I think the full name is Mobius  
17 Encryption Technologies or something like that.  
18 They're a Canadian company.

19 Q Other than what you've told me already in  
20 response to my questions, Mr. Schlafly, have you made  
21 any other applications or requests for licenses in  
22 the cryptography field where you believe your  
23 application was rejected?

24 A Before we go into that, I think Gemplus is in  
25 this category, too, also.

26 Q And which category is that?

1 A Denied a license.

2 Q Okay. Jim -- how do you spell the last name?

3 A G-E-M-P-L-U-S. It's a French company. Denied  
4 a lawsuit in cryptology? I don't know. You could  
5 view my lawsuit against NIST as being a denial in  
6 some sense. It depends on what you mean by the  
7 question.

8 Q Well, in any circumstance where you requested  
9 of somebody you believed was a license holder and you  
10 wanted to make use of any of the technology of the  
11 license holder by becoming a licensee, were there any  
12 circumstances other than what you've already  
13 described where you sought to make use of a license  
14 or licensed product as a licensee where you were  
15 rejected?

16 A You could view the NIST lawsuit in that context.

17 Q Okay. Any others, other than what you've  
18 already described?

19 A I can't think of one offhand.

20 (Whereupon, the confidential record  
21 resumed.)

K

K

1 A It appears to be.

2 Q Take a moment and look at the letter and then  
3 I'll ask a question.

4 (Pause while witness examines document.)

5 THE WITNESS: Okay.

6 Q BY MR. HOGAN: And it's based on this  
7 letter that you make the allegation in paragraph 12  
8 of your amended complaint that the accusation of a  
9 violation of the injunction was directed towards you;  
10 is that correct?

11 A Correct.

12 Q All right. Is your name mentioned in this  
13 letter anywhere?

14 A Not directly.

15 Q Is the word Schlafly to be found anywhere in  
16 the letter?

17 A Not directly, but it's implied.

18 Q And the inference is drawn by you; correct?

19 A Well, the inference -- that's the way  
20 implications work. The inference is drawn by the  
21 reader.

22 Q And that's the way you read it; correct?

23 A Yes.

24 Q And it asserts in this letter that "ISC is the  
25 successor in interest to a partnership known as  
26 Digital Signature."